

August 8, 2006

Friends of Five Mile Creek  
[REDACTED]  
P.O. Box 511  
Fultondale, Alabama 35068

Director of the Office of Civil Rights  
U.S. Environmental Protection Agency  
Mail Code 1201A  
1200 Pennsylvania Ave NW  
Washington, D.C. 20460

8/21/06  
WHL

Re: New Georgia Landfill (Alabama Dept. of Environmental Management Permit Number 37-11)

Dear Director,

The purpose of this document is to file a Title VI complaint with the EPA regarding the Alabama Department of Environmental Management's approval of Permit 37-11 for the New Georgia Landfill (NGL) in Birmingham, Alabama.

**I. Title VI**

**A. STATUTE**

Section 601 of Title VI states,

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. *42 U.S.C. § 2000d.*

As a recipient of EPA financial assistance, the Alabama Department of Environmental Management (ADEM) must comply with Title VI. *40 C.F.R. § 7.35(b)* states:

A recipient [of EPA financial assistance] shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color . . . or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color . . . .

In addition, according to the EPA:

Most federal agencies have adopted regulations that prohibit recipients of federal funds from using criteria or methods of administering their programs that have the effect of subjecting individuals to discrimination based on race, color, or national origin. The Supreme Court has held such regulations may validly prohibit practices having a disparate impact on protected groups, even if the actions or practices are not intentionally discriminatory. See *U.S. EPA Office of Civil Rights, Investigative Report for Title VI Administrative Complaint File No. 28R-99-R4, June 2003* (hereinafter "*EPA 2003 Investigative Report*").

## **B. OVERVIEW OF COMPLAINT**

### **1. TRIGGER EVENT**

The EPA requires that a complaint alleging a Title VI violation be filed "within 180 calendar days" of the allegedly discriminatory act. The discriminatory act, or trigger event, was ADEM's approval of NGL's permit application (Permit 37-11) on July 11, 2006.

### **2. COMPLAINANTS**

All complainants are members of Friends of Five Mile Creek, an organization of residents living in close proximity (0-5 miles) to the New Georgia Landfill. The purpose of the group is to promote the improvement of Jefferson County by considering environmental actions in relation to economics and quality of life.

### **3. RESPONDENT**

ADEM, the respondent, is not only tasked with developing and implementing Alabama's environmental laws, but it is also responsible for administering federal environmental laws, including Title VI of the Civil Rights Act of 1964. In order for a municipal solid waste landfill to begin operations in Alabama, ADEM must issue a permit, which is then effective for five years. ADEM is a recipient of federal funding from the EPA for several of its programs, including Solid Waste.

### **4. ALABAMA'S SOLID WASTES DISPOSAL ACT**

The Solid Wastes Disposal Act is Alabama's enabling legislation for its solid waste program. The Act directs ADEM to develop a State Solid Waste Management Plan that considers "all aspects of local, regional, and state planning, zoning, population estimates, and economics." See *Code of Alabama 22-27-45(3)*. This plan consists of two phases, with Phase I containing the criteria to be used by local governments in formulating Local Solid Waste Management Plans.

According to Phase I, ADEM must set out siting factors for local governments to use when identifying potential locations for solid waste landfills. *See Code of Alabama 22-27-45(4)(a)(5)*. These minimum criteria include:

“the potential impact a facility in any potential location would have on public health and safety, and the potential that such locations can be utilized in a manner so as to minimize the impact on public health and safety; and

“the social and economic impacts that any proposed location would have on the affected community, including changes in property values and social or community perception.” *See Code of Alabama 22-27-45(4)(a)(5)(v-vi)*.

The Act further states that local bodies must consider “the needs of the area, taking into account planning, zoning, population and development estimates, and economics of the jurisdiction, and the protection of air, water, land, and other natural resources.” *See Code of Alabama 22-27-47(b)(8)*. The Act then states that “any site selected will have some socioeconomic effect on some portion of the populations, and the site with the least impact should be considered the most viable.” *Id. at 8-3*. Phase I of the State Plan states:

The population or number of households within various distance rings surrounding the site should be evaluated. The total affected population can be adjusted using weighting factors to give more significance to the population closer to the site. . . . Specific comparisons can be developed that give priority to sites that have the lowest effect on the local government’s population.” *Id. at 8-5*.

The Act prohibits ADEM from even considering a permit application for a site “unless such application has received approval by the affected unit of local government having an approved plan.” *See Code of Alabama 22-27-48(a)*.

## **5. ADEM’S FAILURE TO ABIDE BY THE SOLID WASTES DISPOSAL ACT AND TITLE VI**

ADEM failed to consider safety or socio-economic impacts during the siting and permitting process for the New Georgia Landfill. The City of Birmingham, as the local governing body in this instance, did not consider the factors cited in the Solid Wastes Disposal Act. In fact, the City last held a public hearing for the proposed site in 1994, at which none of these factors was considered. Not only did the City not consider the Act, but it failed to hold a public hearing regarding the siting of the landfill in the past 12 years, despite significant socio-economic, environmental, and economic changes in the surrounding communities.

When a local body fails to consider the minimum siting factors listed in the Act, then ADEM must either undertake a separate consideration of these factors or else refuse

to consider the permit application. At the very least, ADEM should have a program in place to ensure that local governments are implementing local solid waste management plans.

ADEM, however, refuses to consider any factors outside the realm of Subtitle D regulations when considering a permit application. In responding to public comments regarding the requirements of the Solid Wastes Disposal Act, ADEM listed the six siting procedures a local governing body must follow, and then stated, "Since the Alabama Department of Environmental Management is not involved in the local approval phase, the Department is limited in the scope of its analysis to whether the application and proposed permit comply with applicable environmental laws and regulations." *See Response to March 28-April 4, 2006 Public Comments for Permit 37-11, p. 2, July 11, 2006 (hereinafter "Response")*.

Later, in responding to environmental justice concerns, ADEM stated:

ADEM's administration of a regulatory program based on EPA's Subtitle D program cannot be discriminatory unless those regulations are not protective of human health and the environment and thus have the potential to have a discriminatory effect themselves when applied to landfills in communities protected by Title VI. . . . It should also be noted that any alleged discriminatory impact would come as a result of the actual siting of the landfill near an area whose residents are protected by Title VI. ADEM, however, does not site landfills; that responsibility lies with the local host government. *See Id. at pp. 7-8.*

Thus, not only is ADEM refusing to follow Alabama's Solid Wastes Disposal Act, but it is also saying that Title VI is irrelevant to the administration of its regulatory program. If ADEM only is required to consider Subtitle D and nothing more when considering a permit application, then Title VI serves no purpose and does not apply to ADEM. The only way for the public to contest a permit application would be if ADEM's decision making ran contrary to Subtitle D. According to ADEM's logic a Title VI complaint can only be filed against ADEM if the agency has not abided by Subtitle D. Surely, this is not the intent behind Title VI. On the contrary, if ADEM is held responsible for following Alabama's Solid Waste Disposal Act, then the intent of Title VI is fulfilled, and it also means Title VI would apply to ADEM, as it must.

## 6. DISPARATE AND ADVERSE IMPACT

ADEM's approval of the New Georgia Landfill permit and refusal to abide by Alabama's Solid Wastes Disposal Act has the effect of adversely and disparately impacting African American residents in Jefferson County, Alabama. The numerous adverse effects of ADEM's criteria or methods of implementing its solid waste permit program at NGL, discussed in detail below (*see infra III, B*), fall disproportionately on African Americans in Jefferson County. The percentage of African-Americans around the New Georgia Landfill (whether within a 1-mile, 2-mile, 3-mile, or 4-mile radius) far exceeds the percentage of African-Americans in the service area for NGL and in the State of Alabama. *See infra page 8 and EPA 2003 Investigative Report, pp 41-43.*

## II. THE NEW GEORGIA LANDFILL

### A. PROPOSAL/PERMIT

The Alabama Department of Environmental Management (ADEM) described the proposal as follows:

The City of Birmingham has applied for the renewal and modification of the present solid waste facility permit for the New Georgia Landfill (Permit 37-11). The waste stream for the New Georgia Landfill will be non-hazardous, non-infectious, putrescible and non-putrescible waste including but not limited to household garbage, rubbish, commercial solid wastes: wooden pallets, paper, demolition wastes, other similar type wastes; non-hazardous industrial waste, and special waste approved by the Department. The service area for the New Georgia Landfill shall be the City of Birmingham and Jefferson County, Alabama. The average daily volume of solid waste will be 1200 tons per day.

The modification of the permit involves upgrading the previously approved 30.52 acres of disposal area for the disposal of construction/demolition waste to a municipal solid waste disposal cell. These new cells will have a composite liner system which is comprised of compacted clay overlain by a HDPE synthetic liner. The modification to upgrade the landfill also includes the addition of three new groundwater monitoring wells to the existing four groundwater monitoring wells and a separate gas monitoring system. The use of an alternate liner system has been approved for this landfill. The alternate liner consists of (bottom to top): 12" of compacted clay, geosynthetic clay liner, 60 mil HDPE liner, 6 mm geonet, 10 oz geotextile, 24" drainage layer and protective layer (native soils). The cells will also have a system to collect and remove leachate produced in the cells. The modification to upgrade the landfill also includes modifying the cell bottom elevations. The modified cell bottom elevations are 5 feet above the first zone of saturation.

The total permitted facility area for the New Georgia Landfill will be approximately 700 acres in size which includes closed solid waste disposal areas, proposed Subtitle D cells, material borrow areas, equipment buildings, sediment ponds and other buffer or miscellaneous areas. In addition to the regulation of disposal of the above listed wastes within the permitted area, this permit would require the continuation of monitoring activities for the entire 700-acre site, including the closed sanitary landfill areas.



The landfill is located in Section 1, 2, 11 and 36, Township 16 and 17 South, Range 2 West, comprising approximately 700 acres in Jefferson County, Alabama and located off of 52nd Avenue, Birmingham, Alabama.

*See Notice of Public Hearing-422 (Feb. 4, 2005).*  
(<http://www.adem.state.al.us/PublicNotice/Feb/2Birmingham.htm>)

## **B. EVENTS PRECEDING THE PERMIT APPROVAL**

On September 17, 2004, ADEM gave public notice that the City of Birmingham had applied for the renewal and modification of a solid waste disposal permit for the New Georgia Landfill, located in Jefferson County, Alabama. On October 21, 2004, a public hearing was held on the matter. After the hearing, ADEM announced that it was not approving the permit at that time due to incorrect reporting by the City of Birmingham as to the nature of the site where the first "cell" was supposed to be located.

On February 4, 2005, ADEM again gave public notice that the City of Birmingham had applied for the renewal and modification of the NGL permit. A public hearing was scheduled for March 15, 2005. On March 8, Friends for Five Mile Creek informed ADEM that the specifications regarding the proposed alternate liner for NGL were not in compliance with ADEM regulations. ADEM agreed, disapproved of the alternate liner, but elected to proceed with the public hearing on March 15. On March 10, however, Friends for Five Mile Creek informed ADEM that the primary liner was also fatally flawed. ADEM again agreed. ADEM rejected the NGL permit application and called off the public hearing.

On February 17, 2006, ADEM again gave public notice that the City of Birmingham had applied for the renewal and modification of the NGL permit. A public hearing was held on March 28, 2006. ADEM approved the NGL permit application on July 11, 2006, responding to public comments, as detailed above (*see infra I, B (3-4)*).

## **C. TITLE VI BACKGROUND ON THE PROPOSED NGL SITE**

In June 2003, the EPA Office of Civil Rights issued an Investigative Report regarding Title VI Administrative Complaint File No. 28R-99-R4 (Yerkwood Landfill Complaint). The complaint alleged a Title VI violation by ADEM in regards to four permits issued by ADEM. One of these permits was for the conversion of NGL from a solid waste disposal site to a construction/demolition landfill. The EPA described the site as follows:

**Background.** The New Georgia Landfill is located approximately five miles north of downtown Birmingham, Alabama (Jefferson County), but is within the City limits. *See 1994 Permit Application.* The Landfill is operated by the City of Birmingham and services Jefferson County (which

includes the City of Birmingham). The Landfill consists of approximately 700 acres and was opened in 1955. It operated as an open dump before becoming a fully compliant sanitary landfill in 1971. *See 1994 Permit Application; Solid Waste Disposal Permit, No. 37-11 (effective November 2, 1998)*. Within a three-mile radius of the site there are at least three other permitted solid waste landfills used for disposal of foundry wastes, asbestos and construction/demolition wastes. *Id.* From 1892-1951, a portion of the site underlying what is now the construction/demolition part of the Landfill was mined for coal. *See Assessment of Potential For Coal Mine Subsidence and Subsidence Mitigation Measures, New Georgia Landfill Expansion, submitted to HDR Engineering, Inc. (October 1994)*.

**Site Description.** The Facility is located in a mixed use area (industrial, residential, mining, and forest uses) and is bounded by I-65 to the southeast, Southern Railroad to the south and southwest, and Five Mile Creek along the northern boundary of the site. *See 1994 Permit Application*. The main entrance to the Landfill is across a two-lane bridge, which, as of the 1994 application, provided the only access to the Landfill. *See Landfill Permit Application, New Georgia Landfill (December 1994)*. The 700-acre site currently consists of three areas: an old closed sanitary landfill site (105 acres), a vertical expansion sanitary landfill site (40 acres), and a 30.5 acre construction/demolition waste site. *See Notes of Nancy L. Tommelleo, EPA (October 2002 ADEM File Review); Meeting Minutes City of Birmingham (March 19, 1993)*.

The Landfill is situated on a topographic high with surface drainage almost in all directions (radial) but predominantly northward towards Five Mile Creek and subsequently, into the Black Warrior River. *See Landfill Permit Application, New Georgia Landfill (December 1994)*.

*See EPA 2003 Investigative Report at 41-43.*

The EPA recommended that the disparate impact allegation involving the New Georgia Landfill be dismissed at that time. The reason cited was that Subtitle D regulations do not apply to construction/demolition landfills. The EPA said that the potential for the alleged impacts were “significantly reduced as a result of the modification” to a construction/demolition landfill. *Id.* at 63-63.

The present circumstances are substantially different from those at the time of this prior environmental justice complaint. Rather than downgrading the site to a construction/demolition landfill, the City seeks to upgrade the site to a ~~Subtitle D MSW landfill~~ Subtitle D MSW landfill, which will significantly increase the impacts of the site.

### **III. THE ADVERSE EFFECTS OF ADEM’S FAILURE TO FOLLOW EPA GUIDELINES IN ITS ISSUANCE OF A PERMIT TO NGL**

#### **A. THE ADVERSE EFFECTS FALL DISPROPORTIONATELY ON AFRICAN AMERICAN RESIDENTS**

**Demographics.** The demographics, as they relate to African American populations around the New Georgia Landfill, the service area, and the State of Alabama are as follows:

Name of Landfill	Miles (Radius)	Total Population	African American Population	Percent African American	% African American in Service Area	% African American in State
New Georgia	1	2,259	1,746	77.3%	39.3%	26%
	2	11,724	8,575	73.1%	39.3%	26%
	3	28,678	19,372	67.6%	39.3%	26%
	4	52,309	35,840	68.5%	39.3%	26%

*See EPA 2003 Investigative Report at 43-44 (note: Report contains typographical error regarding the name of the landfill above the chart, but presents the correct name within the chart).*

As the numbers illustrate, the proposed NGL will cater predominantly to White citizens, but the effects of the landfill fall predominantly on Black citizens. Given the adverse impacts of the proposed NGL (*see infra* part III, B), as well as the availability of alternatives to the landfill (*see infra* part III, C), the discriminatory effect of the proposed NGL is unacceptable.

## **B. THE ADVERSE EFFECTS OF ADEM'S METHODS OF IMPLEMENTING ITS SOLID WASTE PROGRAM AT THE NEW GEORGIA LANDFILL**

### **1. NO CONSIDERATION WAS GIVEN TO THE NEED OF SUCH A LANDFILL IN THE JURISDICTION**

Alabama law requires ADEM and the local governing body (City of Birmingham) to consider: "The consistency of the proposal with the jurisdiction's solid waste management need as identified in its plan." *See Code of Alabama 22-27-48(1)*. Neither ADEM nor the City followed state law. They both failed to consider the need for another landfill. As a result, the surrounding communities are stuck with the tax burden of paying for an unnecessary landfill, which has other detrimental effects, too (*see infra below*).

Currently, the City of Birmingham disposes of its municipal solid waste at the Eastside Landfill. According to a document written by Mr. Paul Ward, Birmingham's Director of Solid Waste, dated January 3, 2003, the new cell at the Eastside Landfill has capacity until 2050 with an average daily disposal of 450 tons per day (the landfill is actually permitted at 1200 tons per day – which is ample space for future growth). Additionally, the Jefferson County Landfill #1 is easily accessible and willing to accept Birmingham city waste. Future cells will extend the life expectancy of this landfill until



approximately 2050. Also, in addition to the Jefferson County landfill, there are numerous other options including: Onyx Waste Service Management, Superior Waste Services and other private waste management companies.

Jefferson County, including the City of Birmingham, accumulates 810 tons of waste per day, yet has the current landfill capacity, without NGL, to hold 2600 tons of waste per day. Despite this, the City of Birmingham would like to permit an additional 1200 tons per day by expanding the New Georgia Landfill at an estimated cost of \$10 million. If this were to happen, Jefferson County would be capable of disposing 3800 tons of garbage per day, even though it only produces 810 tons per day.

Comprehensive waste management plans from all major cities, including Birmingham, involve recycling. Birmingham's Waste Management Plan from 1990-2000 states that 62% of the total amount of solid waste produced in the City could be recycled and 31% could be composted. The City's objective was to reduce material deposited in landfills by 25% or 104,238 tons per year by 1994, and then increase this number to 50% by 2000. This was supposed to save the City more than \$700,000 per year in disposal costs. The plan involved a citywide curbside pickup program that was to begin in January 1994. Currently, a curbside program exists in Birmingham, though roughly 7,000 homes are not included. Only 10% of Birmingham's residents take advantage of this optional recycling. By all appearances, the City's 15-year-old recycling plan has been a dismal failure. To make matters worse, the City has yet to produce a new waste management plan, meaning it remains 20-30 years behind many other major cities in terms of recycling.

In addition to the optional curbside pickup program, the City has a recycling drop-off center organized by the Alabama Environmental Council (AEC). Since its conception, the center has collected 1,150 tons of recyclables. In 2004, the center saved 458 tons, which equates to 1,511 cubic yards of landfill space. Despite these benefits to the City (even if the benefits are small) the City decided to cut funding for the program, which could not survive without the City's assistance.

## **2. THE RELATIONSHIP OF THE PROPOSED SITE TO MAJOR TRANSPORTATION ARTERIES AND OTHER ROADS WAS NOT CONSIDERED**

When siting a landfill, Alabama law requires ADEM and the local governing body to consider: "The relationship of the proposal to local planned or existing development, or the absence thereof, to major transportation arteries and to existing state primary and secondary roads." *See Alabama Code 22-27-48(2)*. By failing to make this consideration, ADEM has detracted from the economic viability of the surrounding communities, while burdening them with noise and traffic.

Interstate 22 (Highway 78; "Corridor X") is currently under construction. The highway will run between Memphis, TN and Birmingham, AL. Interstate 22 will connect

Cahaba Rivers Land Trust, CAWACO Resource Conservation and Development Council, and the Regional Planning Commission of Greater Birmingham (RPCGB). These partners signed an agreement to implement a greenway corridor along Five Mile Creek. The project has been endorsed by ADEM, the EPA, the U.S. Fish and Wildlife Service (USFWS), and a variety of other public and private organizations. The problem is that the proposed greenway corridor and the proposed cells for the NGL overlap.

According to the Greenway Partnership's website  
(<http://www.cawaco.org/fivemilecreek/partnership.htm>):

Five Mile Creek, a major tributary to the Black Warrior River, is one of the most polluted streams in Jefferson County, Alabama as a result of decades of industrial and agricultural land use practices as well as urban stormwater pollution. In addition, the stream adjoins urban and suburban areas with extensive amounts of impervious surfaces resulting in polluted stormwater runoff and flash flooding. The stream is also included in the Greenway SEP administered, for Jefferson County, by the Black Warrior – Cahaba Rivers Land Trust (Land Trust).

The Five Mile Creek Greenway Partnership is a coordinated partnership effort intended to achieve the goals of improving water and air quality by protecting streamside buffers and developing a greenway corridor that encourages the development of adjacent bicycle and pedestrian friendly infrastructure (alternative modes of transportation). A master plan for Five Mile Creek will be developed as a part of the long and short-range transportation planning process while also providing a tool that presents a shared vision for private and public funding sources and elected officials. A formally adopted master plan will serve as a guideline for future planning efforts within and adjacent to the greenway, consistent design standards for trail and bridge construction, best management practices (BMPs), identification of key points of interest for recreation, stream restoration, nonnative plant removal, preservation of critical habitat for wildlife, historic preservation, and environmental education.

#### **Benefits of the Partnership**

- Water quality improvements as a result of stream buffers and greenways.
- Potential wetland and stream mitigation/banking projects within the corridor.
- Potential means for improving air quality and ensuring compliance with the National Ambient Air Quality Standards through greenway development.

- Additional incentives for transportation planning organizations to support future transportation enhancement projects.
- Potential for a 16.5 mile rail corridor as rail-to-trail conversion within the project area.
- Potential catalyst for 'smart growth' in the watershed and model for other greenway projects.

On May 14<sup>th</sup>, 2005, more than 200 volunteers kicked off the development of the Greenway by constructing a new park along Five Mile Creek in the City of Tarrant, and by removing debris from the creek, filling two dumpsters full of garbage from the polluted waterway. Volunteers helped plant trees and wildflowers, constructed a walking trail, and they helped stabilize the stream bank by planting along the eroding banks of the creek. Local governments and industries made large contribution in terms of equipment, personnel, materials, and labor. The park was constructed on the site of a former mobile home park, which was destroyed by flooding along Five Mile Creek in 2002.

The City of Fultondale, which is located adjacent to the landfill, is scheduled to cleanup the creek on the border of the landfill in the Spring of 2007, and then construct a park across the street from the landfill. The City has obtained an EPA Five Star grant for this project, and is currently in the process of obtaining additional funds to proceed.

The greenway represents an opportunity to improve the environment and standard of living in the areas near Five Mile Creek. The construction of new parks and the availability of recreational opportunities alone represent great benefits to the surrounding communities. The presence, however, of a municipal solid waste landfill along the proposed greenway seriously dampens these benefits. While the greenway is an opportunity to improve and clean up a polluted waterway, the proposed NGL undermines this improvement by threatening land, water, and air quality in the same area, as well as overall quality of life.

#### **b. Property Values**

ADEM's actions also threaten the property values and community perception in communities near the landfill, two factors ADEM and the City of Birmingham refuse to consider. This is problematic for both low-income and middle-class residents near the landfill. For lower income residents, mainly in North Birmingham, a decline in property values only further entrenches them in a cycle of poverty coupled with government apathy towards their situation. Rather than benefiting from economic development and a greenway, these communities are given a landfill. The perception of this area as one of poverty, litter, and environmentally degraded will continue. Meanwhile, a large, middle-class housing development is under construction in the City of Fultondale, adjacent to the north side of the landfill. This housing development presents a significant opportunity to improve the quality of life in Jefferson County and Fultondale, but the landfill poses obvious threats to property values and the greenway.

poisoning have been very well documented (see for example, [www.lead.org.au/fs/fst7.html](http://www.lead.org.au/fs/fst7.html)).

On September 25, 1992, ADEM sent a letter to the City of Birmingham that suggested the monitoring wells at the NGL be replaced. ADEM stated, "The current monitoring well system does not appear to be adequate to detect the release of contaminants to groundwater in all directions. Additional wells are needed in the areas northwest, north, and northeast of the area currently filled with solid wastes." The monitoring wells on the landfill were all located in the southern half of the property. Five Mile Creek, however, flows along the northern border of the property. Thus, to ensure the safety of the creek, additional wells were needed. ADEM indicated that it wished to meet with the City regarding these concerns. Appendix 1 of the 1994 NGL application agrees with ADEM's assessment, saying, "The current monitoring well system does not appear to be adequate to detect the release of contaminants to groundwater in all directions. Additional wells are needed in the areas northwest, north, and northeast of the areas currently filled with solid waste." To date, the City and ADEM have not taken any action regarding the old monitoring wells at NGL.

Concerns regarding the improper maintenance of the former NGL were raised at the most recent public hearing on March 28, 2006 because the new NGL is located within feet of the former site, and is between the old site and Five Mile Creek. Despite its prior acknowledgment regarding the inadequacies of the old monitoring system, ADEM responded to public concerns by saying, "Any concerns raised from historical groundwater monitoring would be unrelated to permit modification." *See ADEM's Response to Public Comments, July 11, 2006.* This statement is illogical given the proximity of the old NGL to the new NGL. Such neglect by ADEM presents a serious risk to the surrounding communities, as the agency has chosen to approve a MSW connected to an improperly monitored property.

#### **IV. Remedies**

In order to remedy ADEM's violation of Title VI of the Civil Rights Act of 1964, the complainants kindly make the following requests of the EPA:

- (1) Terminate federal assistance to ADEM until the agency complies with Title VI and withdraws the existing permit (38-11) for the New Georgia Landfill in Jefferson County, Alabama;
- (2) Withdraw ADEM's authorization to administer the RCRA Subtitle D program for regulation of solid waste landfills until ADEM complies with Alabama's Solid Wastes Disposal Act and Title VI of the Civil Rights Act of 1964;
- (3) Mandate as a condition of receiving federal funding that ADEM has a program in place to monitor local compliance with solid waste management plans, particularly when considering Alabama's Solid Wastes Disposal Act;

- (4) Provide complainants copies of all correspondence to or from ADEM during the course of the EPA's investigation and disposition regarding this complaint;
- (5) Sue to compel ADEM's compliance with federal law in the event that the preceding remedies are ineffective.

## **V. Conclusion**

This complaint shows that ADEM has blatantly ignored both federal law and Alabama law when administering its solid waste regulatory program. This is unfortunate because, as the case of the New Georgia Landfill demonstrates, the burden of such irresponsibility will often fall on disadvantaged African American communities. ADEM's permitting action violates Title VI by creating a discriminatory impact, as primarily African American residents are burdened with the waste and side effects from primarily White residents. The adverse impacts of such a process are numerous, but include: a loss of economic opportunities, a diminished quality of life, decreased property values, health and safety risks, and difficulties with social perception. If the EPA does not take action in this case, then ADEM will continue to receive federal assistance while ignoring federal law and burdening its residents.

## **VI. Signatures of Complainants**

